IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.421 OF 2005

Prakash Rasiklal Dhariwal)
age 40, residing at 100/101,)
D.Kennedy Raod,)
Manikchand House, Pune-1.)..Petitioner

Versus

1. Central Bureau of Investigation)
New Delhi.)

2. The State of Maharashtra)
(D.C.B.,C.I.D., Mumbai))..Respondents

Sarvashri Adhik Shirodkar, Senior Counsel with Rajendra Shirodhkar for the Petitioner,

Sarvashri Shekhar Naphade, Senior Counsel with Ms Akhila Kaushik, D.S.Mhaispurkar, APP and B.H.Mehta, APP for the State

Sarvashri Raja Thakare with Ejaz Khan and A.M.Chimalkar for the C.B.I.

CORAM : R.M.S.KHANDEPARKER &

P.V.KAKADE, JJ.

DATE : 22ND FEBRUARY, 2005.

ORAL JUDGMENT : (Per Khandeparkar, J.)

1. We have heard at length the learned advocates for the parties.

2. Rule. By consent the rule is made returnable

forthwith.

3. The Petitioner challenges the Warrant issued against his father Rasiklal Dhariwal being without jurisdiction as also the Order passed by the Court below in MCOC Special Case No.1/2005 directing issuance of warrant to be bad in law and without jurisdiction.

4. Few facts which are relevant for the decision in the matter are that the L.A.C. Case under Sections, 3, 7 & 25 of the Arms Act came to be registered against one Jamruddin on 27.9.2004. Consequently, C.R.No.122 of 2004 was registered against the said Jamruddin and three others. Jamruddin was came to be arrested on 10.10.2004 followed by another accused viz. Rajesh. The interrogation of the said accused allegedly revealed involvement of Shri Rasiklal Dhariwal, hereinafter referred to as "Rasiklal" as well as Petitioner in another Writ Petition No.386 of 2005 namely Shri Jagdish M. Joshi, hereinafter referred to as "Joshi" in the offence. The provisions of MCOC Act were applied to the matter and Jamruddin and Rajesh were remanded to the custody in MCOC case on 23.10.2004. Further, the statement of witness recorded under Section 161 as well under Section 164 of Cr.P.C. revealed involvement of

both, Rasiklal and Joshi, in the said offence. The investigation proceeded further and in the course of the investigation, the confessional statement of one of the accused came to be recorded on 6th and 8th November, 2004. While it is the contention of Joshi that he left India after obtaining necessary permission from the Court in August 2004, it is the contention of the respondents that he left India on 4th October, 2004. There is no dispute that Rasiklal left India on 12th October, 2004.

5. The letter dated 2.12.2004 came to be issued by the Investigating Officer to the Petitioner asking him to appear before him in relation to the investigation pertaining to the case bearing C.R. No.122 of 2004 registered under Section 120(b) r/w 384, 387 and 34 of Indian Penal Code r/w 3, 25 of MCOC Act. In answer to the said call letter Rasiklal informed about his NRI's status and requirement of his stay for minimum period of 182 days in a year outside India and his arrival before the expiry of the said minimum period would cause him business loss to a great extent and that therefore he should be allowed to appear before the Investigating Agency only after the required period of stay outside India is over. With reference to the said letter, the

respondents informed Rasiklal by the letter dated 27.12.2004 that he was required to attend the office at once and to cooperate with the investigating agency to unfold the true facts of the case. The letter disclosed the subject to be the investigation in DCB. CID. CR. NO.122/04 u/Sec.384, 387, 34 IPC r/w 120(b), IPC r/w, 3, 25A of Act r/w M.C.O.C. Act, 1999. The same was followed by an application dated 30th December, 2004 before the Special Court, at Mumbai requesting for an order of non-bailable warrant against Rasiklal and Joshi. The same was allowed on 31.12.2004 directing issuance of non-bailable warrant as prayed for. On 6.1.2005 Rasiklal again wrote a letter to the Commissioner of Police, Mumbai requesting him to accommodate him and to allow him to stay out of India to enable him to continue his NRI status. The same was followed by yet another letter dated 15.1.2005 wherein it was informed that he had practical difficulty in coming to India before the end of financial year and if the investigation agency cannot wait till then for his interrogation, then there could be video conferencing and if necessary he would provide two return air tickets for the investigating officers along with other facilities as may be desired by the investigating agency in order to enable them to go to Dubai for his

interrogation. Meanwhile the cahrgesheet in MCOC Special Case No.1 of 2005 came to be filed against four persons. In the said MCOC case an application came to be filed on behalf of Rasiklal asking for a copy of the charge-sheet. The same was objected to by the learned Prosecutor and the Court below after hearing the parties rejected the said application by its order dated 27.1.2005. Meanwhile the non bailable warrant came to be issued in terms of order dated 31.12.2004. Rasiklal as well as Joshi filed applications before the Special Court constituted under MCOC Act being Application Nos.57 of 2005 and 26 of 2005 respectively in MCOC Case No.1/05 requesting for cancellation of the non-bailable warrant issued against them. After hearing the parties, the said applications were dismissed by the order dated 1.2.2005. Consequently the present Petition came to be filed along with another Writ Petition by Joshi.

6. While challenging the action on the part of the Respondents in obtaining the non-bailable warrant against Rasiklal, it is sought to be contended that not even an FIR is registered against Rasiklal nor his name is disclosed in the charge-sheet filed in Special Case No.1/2005. It is the contention of the petitioner that even though there is no bar for the investigating agency

to investigate into the matter even after filing of the charge-sheet, the courts have no jurisdiction to issue warrant of arrest against the person who is not disclosed as an accused in the case and certainly not for the purpose of the appearance of such person before the Investigating Agency in aid of investigation. The provision of law comprised under Section 73 of Cr.P.C. merely empowers the court to issue warrant for the purpose of appearance of the person before the court and that too, in case of three classes of persons specified thereunder. According to the learned advocate for the petitioner, the intimation given to Rasiklal was to the effect that he was acquainted with the facts of the case and therefore, his presence was required before the investigating officer in the matter of investigation of the case and being so, a person who is merely required to appear before the police in exercise of powers under Section 160 of Cr.P.C. cannot be subjected to forcible appearance before the investigating agency with the aid of the Court. Reliance is sought to be placed in the decision of the Apex Court in **State through CBI vs. Dawood Ibrahim Kaskar and Ors**. reported in (2000) 10 SCC 348 and **Kishori Skingh and Ors. Vs. State of Bihar and Anr**. reported in AIR 2000 SCC 3725 as well as decision of the learned Single Judge of the Delhi High

Court in **Washeshar Nath Chadha vs. The State**, reported in 1993 Cr.L.J. 3214 (Del). It is also sought to be argued that in the absence of specific provision of law empowering the Magistrate or the Court below to issue warrant at the stage of investigation in a matter and for the purpose of the appearance of a person before the investigation officer, the Courts or Magistrate do not enjoy inherent powers and that the same is well settled by the decision of the Apex Court in the case of **Adalat Prasad vs Rooplal Jindal & Ors.** reported in 2004 ALL MR. (CRI) 3131 (SC).

7. The learned advocate appearing on behalf of the Respondents, on the other hand, while referring to their affidavit filed by the Investigating Officer, has submitted that the statement of the witnesses as well as one of the accused involved in the matter, disclose involvement of Rasiklal and Joshi in the offence punishable under Section 3, 25A of the MCOC Act and in that regard the investigation is in progress and for that purpose the custodial interrogation of Rasiklal and Joshi is necessary. He has further submitted that since inspite of all the efforts on the part of the investigating machinery to secure presence of Rasiklal and Joshi before the police in the course of

investigation did not yield fruitful result, the respondents were compelled to approach the Special Judge for getting non bailable warrant in order to secure the presence of the said persons. According to the learned advocates, the Magistrate and the Court below have ample jurisdiction to pass such an order and direct issuance of the warrant even at the stage of investigation, particularly when a charge-sheet in relation to the offence against the persons against whom the investigation is complete has already been filed, while the investigation against others is yet to be completed. They have further submitted that consequent to issuance of such warrant, the person against whom such warrant is issued has to appear before the Court to be dealt with u/Sec. 167 of Cr.P.C. and being so it cannot be said that there is any infraction of Section 73 of Cr.P.C. while issuing the warrant.

8. It is also sought to be argued on behalf of the Petitioner that the fact that Rasiklal was all throughout willing to cooperate with the investigating agency and it is only on account of circumstances beyond his control that he was not able to come to India immediately in answer to the letters issued by the Investigating Agency, and this fact was suppressed by

the Investigating Agency while seeking the order for issuance of the warrant. The contention is sought to the countered by referring to the contents of the application by the Respondents while submitting that the same apparently discloses the involvement of Rasiklal and Joshi being revealed by the accused in the course of the investigation.

9. The order is also sought to be challenged on the ground that the contention regarding so called involvement of Rasiklal is purely after thought inasmuch as that when the application for supply of copy of the charge-sheet in MCOC Case No.1/205 was filed on behalf of Rasiklal, it was sought to be contended on behalf of the respondents that Rasiklal was not involved in the matter nor his name was disclosed in the charge-sheet. The contention is sought to be countered by contending that there was no such statement made about non involvement of Rasiklal in the offence and what was submitted was that in the charge-sheet already filed before the MCOC Court, the name of Rasiklal was not disclosed as the accused at that stage.

10. It is also to be noted that the learned advocate appearing for the respondent No.1 has raised preliminary

objection to the effect that the matter is essentially against the order passed by the Special Court and that being a judicial order, a revision application or a Petition under Article 227 of the Constitution of India lies against the same and in that case the matter will have to be placed before the learned Single Judge. The same is countered on behalf of the petitioner submitting that the petition is essentially in relation to the absence of jurisdiction of the court below for issuance of the warrant during the pendency of the investigation and prior to filing of the charge-sheet against the person against whom the warrant is sought to be issued and being so, there is no question of driving the petitioner for the revision application or the petition under Article 227 of the Constitution of India.

11. As regards the preliminary objection sought to be raised on behalf of the Respondents we do not find any substance in the same. The Petitioner, as stated above, challenges the jurisdiction of the Magistrates or the Courts below to order issuance of warrant for the purpose of appearance of a person before the Investigating Agency even before filing of the charge-sheet against such person. Being so, the preliminary objection in that regard is rejected.

12. Heavy reliance is placed in the decision of the Apex Court in Kaskar's case while arguing about the absence of jurisdiction to the Magistrate or the Court below for ordering issuance of warrant. The Apex Court undoubtedly in Kaskar's case while dealing with issue as to when and under what circumstances a Court can invoke the provision of Section 73 of Cr.P.C. had considered the point as to whether the Court can issue a warrant to apprehend a person during investigation for his production before police in aid of investigating agency. While dealing with the issue and the point, the Apex Court considered the decision of the Division Bench of this court in Mohd. Ahmed Yasin Mansuri vs. State of Maharasthra reported in 1994 Cr. L. J. 1854 (Bom). In Mohd. Mansuri's case the Division Bench had held that the Designated Court could not have issued warrants in the aid of investigation and could have issued the same only by way of process issued under Section 204 of the Code. It was held that issuance of warrant after cognizance of an offence is taken would be a process contemplated under Section 204 (1)(b) of the Code, i.e., it would be a process to face trial and there is no provision in the Code for issuance of warrant of arrest and custody of accused for the purpose of, or in aid of,

investigation and the process contemplated is a process to face trial. After taking note of the said decision of the Division Bench of this Court and on scanning through Chapter VI of the Code, the Apex Court has recorded rival contentions which were sought to be raised by the counsel appearing in the said matter. The contention which was sought to be raised on behalf of the State was that though in exercise of its power under Section 41 of the Code a police officer may without an order from a Magistrate and without a warrant, arrest a person who is concerned in any cognizable offence or against whom a reasonable compliant has been made, or a credible information has been received or a reasonable suspicion exists, of his having been so concerned, under the Code the police has no power of its own to compel his appearance if he evades the arrest. It is in that context, the court has been given a power under Section 73 to issue warrant of arrest for apprehension of such a person. The said contention was sought to be countered by the learned Counsel appointed as Amicus Curiae while urging that the scheme of the Code is that the police has complete control of the investigation and is not aided by any judicial authority and once the investigation culminates in the police report under Section 173(2) that the Court steps in by taking

cognizance thereupon and issuing summons or warrant under Section 204 against the person arraigned and therefore, while investigating under Chapter XII the police is not entitled to seek the help of a Magistrate for the purposes of issuance of a warrant of arrest in aid of investigation.

13. The Apex Court referring to Section 73 of the Code held that " Section 73 confers a power upon a Magistrate to issue a warrant and that it can be exercised by him during investigation also, can be best understood with reference to Section 155 of the Code. As already noticed under this section a police officer can investigate into a non-cognizable case with the order of a Magistrate and may exercise the same powers in respect of the investigation which he may exercise in a cognizable case, except that he cannot arrest without warrant. If with the order of a Magistrate the police starts investigation into a non-cognizable and non-bailable offence, (like Sections 466 or 467 (Part I) of the Indian Penal Code) and if during investigation the Investigating Officer intends to arrest the person accused of the offence he has to seek for and obtain a warrant of arrest from the Magistrate. If the accused evades the arrest, the only course left open to the

Investigating Officer to ensure his presence would be to ask the Magistrate to invoke his powers under Section 73 and thereafter those relating to proclamation and attachment. In such an eventuality, the Magistrate can legitimately exercise his powers under Section 73, for the person to be apprehended is "accused of a non-bailable offence and is evading arrest".

14. The learned advocate appearing for the petitioner, however, drawing our attention to the specific ruling of the Apex Court that "since warrant is and can be issued for appearance before the court only and not before the police and since authorisation for detention in police custody is neither to be given as a matter of course nor on the mere asking of the police, but only after exercise of judicial discretion based on materials placed before him, Mr. Desai was not absolutely right in his submission that warrant of arrest under Section 73 of the Code could be issued by the courts solely for the production of the accused before the police in aid of investigation", in para 22 of the judgment, submitted that neither it was disclosed that Rasiklal was involved in the offence or required to in any MCOC case in respect of the charge-sheet which was already filed before the Special Court nor the name

of Rasiklal was referred as wanted accused in the charge-sheet filed in the said Case and being so, question of applicability of section 73 does not arise at all and in any case there cannot be a warrant for appearance of the person before the police in aid of investigation. The contention of the learned advocate for the petitioner is that the application which was filed for issuance of such warrant did not disclose any intention on the part of the respondent regarding the production of Rasiklal before the Magistrate or the Court in pursuance of the said warrant.

15. Perusal of copy of the Application filed before the Special Judge for the purpose of obtaining warrant ex-facie discloses reference to the subject of the application as "Request to issue open non-bailable warrant against wanted accused persons". Undoubtedly the application was filed in relation to Rasiklal and Joshi. The Application also stated that "During the investigation of this case, it was revealed that one Jagadishprasad Mohanlal Joshi @ J.M.Joshi, owner of Goa Gutka and Rasiklal Manikchand Dhariwal, owner of Manikchand Gutka have played an important role in this case. Both Jagdishprasad Mohanlal Joshi & Rasiklal Manikchand Dhariwal were summoned to attend this office

for enquiry in connection with this offence. However, both of them have intimated that they are unable to attend the investigation agency immediately....." The application further stated that "the investigation so far carried out reveals that Jagdishprasad Mohanlal Joshi and Rasiklal Dhariwal had meeting with wanted accused Anis Ibrahim Kaskar and arrested accused Jamiruddin @ Jambo at Dubai in connection with settlement of financial dispute between themselves". It cannot be disputed that an application for issuance of warrant against the accused persons need not disclose the materials collected by the investigation agency in the course of the investigation. The excuse of about financial loss cannot entitle a person to claim any sort of immunity or protection against his appearance before the investigation officer or insistence for non cooperation to the Investigating Agency and more particularly when the investigation is in relation to the offence punishable under the provisions of MOCA, Act, as such an offence being of serious nature. Once the investigating agency requires the assistance of a person in the investigation of a matter, having reason to believe that the person concerned is acquainted with facts in relation to such offence, it is the duty of such a person to render all his assistance in that

regard to the investigating agency for completion of investigation as early as possible and mere excuse of loss of finance to such person cannot be a justification to evade or avoid or delay his appearance before the investigating agency.

16. For the reasons stated above therefore, merely because the application which was filed by the respondents did not elaborately disclosed all the facts and/or the acts on the part of Rasiklal revealing his involvement in the alleged offence that by itself will not enure to the benefit of Rasiklal or the petitioner to argue that there was no case made out by the Respondents for issuance of the warrant or to contend that the exercise of powers under Section 73 is illegal and that the warrant has been sought to be obtained for the parties for production of the person before the police in aid of investigation.

17. At this stage we have to note that we have perused the copy of the Warrant, which is stated to have been issued against Rasiklal and the Warrant clearly directs arrest of Rasiklal and his production before the Court. The Warrant nowhere directs the production of Rasiklal before the investigating officer or the said

agency nor it appears to have been issued in aid of investigation as such.

18. The ruling of the Apex Court in Kaskar's case rather than assisting the Petitioner in their contention clearly justifies the order passed by the Court issuing warrant against Rasiklal. Once it was apparent that inspite of efforts on the part of the investigating agency Rasiklal had failed to appear before the Investigating Agency within the time granted and when required, and at the earliest opportunity, certainly the Respondents were justified in approaching the Court for exercise of its powers under Section 73 of the Code. Earliest opportunity cannot be said to be as per convenience of the person who is required to be appear before the investigating agency. Merely because Rasiklwal wants to enjoy NRI's status and in that regard he is required to be out of India for 182 days and atleast till end of March 2005 that would not entitle him to contend that he will not appear before the investigating agency in India before the completion of the said period. The earliest opportunity would be in terms of the notice in that regard issued by the Investigating Agency, unless there are unavoidable circumstances which do not permit the person to appear

before the investigating agency. Merely because a person wants to enjoy NRI's status that cannot be a justification to contend that the earliest opportunity would be only after completion of 182 days nor the same could be said to be unavoidable circumstances. Apart from the desire to claim such benefit, no other difficulty as such was expressed by Rasiklal to appear before the investigating agency in India. The method which is to be followed for investigation cannot be dictated by a person who is required to assist the investigating agency. Whether it should be by way of video conference or visiting the foreign countries by the investigating officer, the same cannot be decided by Rasiklal. It is for the investigating agency to take appropriate decision in that regard. It cannot be left to the choice of a person who has been accused of involvement in offence and particularly offence under MCOC Act. Money power cannot be allowed to compel or make the investigation agency to dance to the tune of the person required to be interrogated to ascertain about his or her involvement in an offence, nor it can be allowed to decide the methodology of the investigation to be followed by the investigating agency.

19. The decision of the Delhi High Court in **Washeshar Nath Chadha's** Case was essentially on concession and for the reason that warrant was sought to be issued for co-lateral purpose. The learned Single Judge of the Delhi High Court in para 25 has clearly observed that " CBI has now conceded that resort could not be made to aforesaid provisions for enforcing the presence of the petitioner in the CBI office at New Delhi." Further in para 28 of the decision it has been observed that " The learned Counsel for the petitioner has submitted that the Investigating Officer was fully aware of the fact that he was not in a position to execute these warrants of arrest against the petitioner addressed to him at the Delhi address of the petitioner, who was in fact residing at Dubai and it was only with a collateral purpose to get the passport of the petitioner revoked. I am, afraid, it is not open to this Court to visualise the hidden purpose but the fact remains that these warrants could not be issued being not warranted by the fact of the case." Apparently the decision was in the peculiar facts of the case and does not lay down any proposition of law as such. That apart in view of the Supreme Court decision in Kaskar's case, it is too late in the day to contend that the Magistrate or Courts below are powerless to issue a warrant at the stage of

investigation. Undoubtedly on issuacne of such warrant, the production of such person would be before the concerned court and not before the Investigating officer and on such production, the court will have to deal with the person in accordance with the provisions of law comprised under Section 167 of Cr.P.C. In fact the decision of the Apex Court in Kaskar's case in that regard is very clear wherein it has been ruled that " on such production, the court may either release him on bail under Section 439 or authorise his detention in custody (either police or judicial) under Section 167 of the Code".

20. In fact the point as regards such jurisdiction of the Magistrate to issue warrant at the stage of investigation came to be considered by the Division Bench of Alhabad High Court in the case of L.Ram Narain Singh vs. A.Sen reported in AIR 1958 ALLHABAD 758. After referring to Sections 54, 55, 56, 60, 61, 64, 65, 167, 190, 204 of Old Cr.P.C. 1893, which correspondence to Section 41(1), 41(2), 55(1), 56, 44(1), 44(2), 167, 190 and 204 respectively of the New Code, i.e. Criminal Procedure Code, 1973. The Division Bench of Alhabad High Court held thus :

"A reading of the above sections would show that there is no express provision in the Code of Criminal Procedure authorising any Magistrate to order the arrest of any person, who, he thinks, is guilty of the commission of a cognizable or a non-conginzable offence unless he has taken congnizance of the case himself. But under Section 167, a Magistrate has to decide whether he will remand the accused to the custody of the police and, even if he has no jurisdiction to try the case, he can in suitable cases remand the accused to the police custody for the maximum period of 15 days. It would be anomalous if the Magistrate had the power to remand the police custody for 15 days but would not have the power to arrest a person whom he believed to be guilty.

It would further be anomalous that any police officer may have the power to arrest a person, reasonably suspected of having committed a cognizable offence, but the Magistrate should have no such power. The very fact that a police officer under S.54 may arrest without an order from a Magistrate and without a warrant implies

> that such an officer may also arrest with a warrant from a Magistrate, and this means that the Magistrate may issue a warrant even at the stage where S.54, Cr.P.C. applies."

In fact the said ruling of Alhabad High Court clearly discloses that the view taken by the Alhabad High Court finds implied approval by the Apex Court in Kaskar's case. The only rider which has been added in Kaskar's case is that once the warrant having been issued in exercise of powers under Section 73, the person so arrested is to be produced before the Court and the court on production of such person has to deal with him in accordance with the provisions of law comprised under Section 167 of Cr.P.C.

21. The contention was sought to be raised that such power to issue warrant by the Court against a person other than the one who is already accused before the court is available only under Section 319 of Cr.P.C. and in that regard an attention was drawn to the decision of the Apex Court in Kishori Singh's case (supra). In the said case the Apex Court had held that the Magistrate cannot issue process against those persons who have been named in the F.I.R. as accused

persons, but are not chargesheeted in the charge-sheet which is filed by the police under Section 173 of .P.C. and that, so far as those persons against whom charge-sheet has not been filed, they can be arraigned as persons in exercise of powers under S.319 of Cr. P.C. when some evidence or materials are brought on record in course of trial or they can also be arrayed as the accused persons only when a reference is made either by the Magistrate while passing an order of commitment or by the Sessions Judge to the High Court and the High Court, on examining the materials, comes to the conclusion that sufficient materials exist against them even though the police might not have filed charge-sheet. It is to be noted that Section 319 relates to the cases where some material is brought against the persons in the course of trial or while the matter is pending before the court. The provisions of Section 319 of Cr. P.C. do not control the powers of the Investigating Agency under Section 173 (8) of Cr.P.C. The decision which is in relation to the matter pending before the court and the powers of the court to issue warrant against the person against whom the material is brought during the course of trial, nowhere speaks of any bar or any embargo over the powers of the investigating agency to investigate further into a

matter, if some material requiring such further investigation is revealed to such agency after filing of the charge-sheet. Being so, if an involvement of any person in the offence comes to the notice of the investigating agency and in that regard if such a person fails to render necessary cooperation to the investigating agency, nothing prevents the investigating agency from approaching the court for exercise of powers under Section 73 of Cr.P.C. for issuance of the warrant against such person on arrest of such person however, he will have to be primarily produced before the court to be dealt with in accordance with the provisions of law comprised under Section 167 of the Code.

22. The decision in Adalat Prasad’s case is of no help to the petitioner to question the power of the Magistrate or the Court below to issue warrant under Section 73 of the Code. That was a case wherein the Apex Court has ruled that after taking cognizance of the complaint and on examining the complaint and the witnesses if the magistrate is satisfied that there is sufficient ground to proceed against the person shown as accused and there upon issues process by way of summons under Section 204 of Code, it would disclose that a Magistrate was satisfied about the sufficiency of the

grounds against the person named as the accused and that time the stage under Section 203 being already over, the matter can only be proceeded further in terms of provisions comprises under Section 204. At the same time it has also been held that if such process was issued without sufficient materials for satisfaction regarding need for such process, the aggrieved person can certainly approach the High Court in exercise of powers under Section 482 of the Code but cannot approach the same Magistrate for recall of process as the Code does not contemplate a power to review such order by the Magistrate. The specific ruling in that regard is that:

> "It is true that if a Magistrate takes cognizance of an offence, issues process without there being any allegation against the accused or any material implicating the accused or in contravention of provision of Sections 200 and 202, the order of the Magistrate may be vitiated, but then the relief an aggrieved accused can obtain at that is not by invoking section 203 of the Code because the Criminal Procedure Code does not contemplate a review of an order. Hence in the absence of any review power or inherent power with the subordinate

> criminal Courts, the remedy lies in invoking Section 482 of Code."

That is not the case in hand. It is not the case of exercise of inherent powers as such by the Magistrate or the Court for issuance of the warrant. The power to issue the warrant specifically exists under Section 73 and that has been clearly ruled by the Apex Court in Kaskar’s case (supra).

23. The absence of name of Rasiklal in the charge-sheet already filed in MOCA case cannot lead to the conclusion that the requirement of Rasiklal for interrogation and his appearance for that purpose before the investigating agency is either after thought or for any collateral purpose. The contention that the prosecution had informed to the lower court in answer to Rasiklal’s application for copy of charge-sheet in MCOC case that Rasiklal was not involved in the matter is not only devoid of substance but virtually amounts to distortion of the submissions made by the prosecution before the lower court in the regard. As rightly submitted by the learned advocate for the respondents, what was submitted by the prosecution was that "the charge-sheet does not reveal that the applicant is a

wanted accused at this stage". The statement nowhere discloses that Rasiklal was not involved in the matter at all. On the contrary the statement was clearly to the effect that in the charge-sheet already filed in the case, the name of Rasiklal was not disclosed as the wanted accused at that stage. That does not mean to say that Rasiklal was or is not wanted in the matter. Besides, the application for warrant was already filed on 20.12.2004, much prior to the said statement. The said statement was in relation to those persons in respect of whom the investigation was already completed and not in relation to the investigation relating to Rasiklal’s involvement in the offence the investigation in respect of which is still in progress.

24. Besides, there is no case made out for exercising writ jurisdiction in favour of a person who is reluctant to render necessary and prompt cooperation to the investigating agency and that too relating to a severe offence punishable under MOCA Act and one who takes delight in imposing condition for his appearance before the investigating officer.

25. For the reasons stated above, therefore, we do

not find any illegality on the part of the Respondents in the facts and circumstances of the case, for having approached the Special Court for issuance of the warrant against Rasiklal, and therefore, there is no case for interference in the impugned warrant or for the order of issuance of warrant and hence, the Petition fails and is hereby dismissed. Rule is discharged with no order as to costs.

26. At this stage the learned advocate for the petitioner requested for Stay of the Order passed today as well as for the Stay to the warrant. Considering the view taken by us, we do not find any justification for the grant of any stay and prayer in that regard is therefore rejected.

(R.M.S.KHANDEPARKAR, J.)

(P.V.KAKADE, J.)